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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

96 WYTHE ACQUISITION LLC, LLC

Debtor.

Case No. 21-22108

Chapter 11

**MOTION BY THE CUSTODIAN, CONSTANTINO SAGONAS, AS
TEMPORARY RECEIVER, PURSUANT TO 11 U.S.C. § 543, FOR AN
ORDER (i) APPROVING THE RECEIVER CONSTANTINO
SAGONAS' FINAL ACCOUNTING; (ii) APPROVING THE
RECEIVER'S FEE; (iii) DIRECTING PAYMENT OF THE
OUTSTANDING RECEIVER FEE BALANCE OF \$40,000.00; (iv)
APPROVING THE RECEIVER'S ATTORNEYS FEES, AND (v)
DISCHARGING THE RECEIVER'S BOND**

Stephanie S. Lim, Esq. of Kellner Herlihy Getty & Friedman, LLP, as attorney for Constantino Sagonas, as Temporary Receiver ("Receiver"), submits this motion for an Order:

A. Pursuant to 11 U.S.C. § 543(b):

- i. Approving the Receiver, Constantino Sagonas' Final Accounting; and
- ii. Discharging and canceling the Receiver's surety and bond.

B. Pursuant to 11 U.S.C. § 543(c)(2):

- i. Approving the Receiver's fee at \$10,000.00 per month and providing for and directing the immediate payment of the amount of \$ 40,000.00 for the services rendered by the Receiver; and
- ii. Approving the Receiver's attorneys fees.

- C. Pursuant to 11 U.S.C. 362(d), lifting the automatic stay to the extent necessary to file any order granting this motion in the New York State Courts and/or to effectuate the relief sought herein; and
- D. For such other relief that the Court deems just and proper.

BACKGROUND

Constantino Sagonas was appointed Temporary Receiver by an order of the Supreme Court of the State of New York, County of New York, dated February 21, 2020, in the mortgage foreclosure action captioned *Benefit Street Partners Operating Partnership, L.P. v. 96 Wythe Acquisition LLC, et al.* (Index no. 653396/2019). Constantino Sagonas was qualified as Temporary Receiver by filing his oath and surety bond on February 27, 2020.

On February 23, 2021, the debtor filed voluntary petition pursuant to chapter 11 of the United States Bankruptcy Code.

RELIEF REQUESTED

11 U.S.C. § 543(c) states that the court, “after notice and a hearing, shall...(2) provide for the payment of reasonable compensation for services rendered and costs and expenses incurred by such custodian.”

Once Constantino Sagonas was appointed Supreme Court’s custodian, he has performed his duties and complied with the terms of the Temporary Receiver order, even in light of the circumstances presented by the COVID-19 pandemic.

Constantino Sagonas received from February 12, 2020, the date of his appointment as Temporary Receiver, through February 23, 2021, the date the bankruptcy petition was filed, the total amount of \$100,000.00. *See* Constantino Sagonas’ Fee Accounting of all fee payments, as Exhibit F of Constantino Sagonas’ Declaration (“Declaration”).

The Receiver agreed to act as temporary receiver for a fee of \$10,000.00 per month; however, the Debtor still owes Constantino Sagonas for approximately four months of work, or \$40,000.00 that remains unpaid. The Receiver Fee Ledger and the February invoice are attached as Exhibit G and H of the Declaration.

THE BASIS FOR THE RECEIVER'S REQUESTS

As detailed in the Declaration, Constantino Sagonas has worked as a hotel manager for over 40 years and has managed more than 100 hotels. Immediately upon being appointed as Temporary Receiver for The Williamsburg Hotel, despite rising to the challenge of the unprecedented circumstances COVID-19 imposed, the Receiver undertook his responsibilities, including, without limitation: (i) reviewing and authorizing the hotel's revenues, payroll, and expenses; (ii) producing monthly and quarterly financial reports, and (iii) resolving various building issues, including navigating governmental restrictions and regulations promulgated in the wake of the pandemic. *See Declaration ¶¶ 7-12.*

Moreover, the Receiver was authorized to retain his own counsel, at a rate of \$350.00 per hour, especially to assist him with the foreclosure litigation (a copy of the July 29, 2020 Decision and Order, filed as EF# 259 in the foreclosure action is attached as Exhibit D of the Declaration).

As one creditor filed motions seeking to replace Constantino Sagonas as Temporary Receiver, Kellner Herlihy Getty & Friedman, LLP has assisted the Receiver to produce voluminous reports and documents and to appear at hearings. Once this Chapter 11 case was filed, Kellner Herlihy Getty & Friedman, LLP has also assisted the Receiver with the context of this proceeding. *See Declaration ¶¶ 14-17.*

Constantino Sagonas has been devoting several hours to the receivership and has performed the necessary work to manage The Williamsburg Hotel. In addition to his

compensation, the Receiver incurred expenses with his attorneys' fees. Therefore, the Receiver believes those fees and costs are reasonable and necessary to conclude this receivership.

CLOSE THE RECEIVERSHIP AND DISCHARGE RECEIVER

Constantino Sagonas has expended maintaining and managing the property during his tenure as a receiver. After approving the receiver fee at the rate of \$10,000.00/monthly from February 2020 through March 2021, and with the payment of the outstanding balance set forth above, the Receiver will have completed his responsibilities as Temporary Receiver.

Consequently, Constantino Sagonas respectfully requests that the Court enter an order, in the form of the proposed order, that closes the receivership and discharges the Receiver without further order from this Court, effective upon the Receiver filing a closing declaration in which he attests that he has completed his duties. The Receiver requests the Court's order discharge him and his agents, employees, members, officers, independent contractors, attorneys, and representatives and relieve the Receiver, his agents, employees, members, officers, independent contractors, attorneys, and representatives of all duties, liabilities, and responsibilities pertaining to this receivership.

CONCLUSION

WHEREFORE, the Receiver respectfully requests that the Court grant this motion by entering the proposed order submitted herewith, together with such other and further relief as maybe just and proper.

Dated: April 22, 2021

Respectfully submitted,

KELLNER HERLIHY GETTY & FRIEDMAN, LLP

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